



City Attorney

DATE: June 6, 2023
FROM: Jannelle Combs, City Attorney
ITEM: City/County Building Lease with Burleigh County

REQUEST:

Consider approval of the City/County Building lease with Burleigh County.

Please place this item on the June 13, 2023, City Commission meeting agenda.

BACKGROUND INFORMATION:

Burleigh County has requested a rate adjustment from \$15.00/sq.ft. to \$13/sq.ft. for approximately 14,967.75 square feet of space they lease in the City/County Building. The Bismarck Burleigh Commissions Committee has been discussing the proposed change to the current City/County Building lease over the course of many meetings. Information regarding types of space leased (office and storage) and cost comparisons of other available office spaces have been shared during Committee meetings.

The Committee has reached a consensus on the new rate of \$13.00/sq.ft. which effectively puts the storage space (1,489 sq.ft.) at \$3.95 a square foot and the rest of the office space (13,478.75 sq.ft.) at \$14 a square foot. The Committee recommended the new rate of \$13/sq.ft. be considered for approval by the City Commission and Burleigh County Commission.

RECOMMENDED CITY COMMISSION ACTION:

Approve City/County Building lease with Burleigh County.

STAFF CONTACT INFORMATION:

Jannelle Combs | City Attorney | 701-355-1340 | jcombs@bismarcknd.gov

LEASE AGREEMENT

This lease agreement is made and entered into by and between the City of Bismarck, hereinafter referred to as "**Landlord**," and the county of Burleigh, hereinafter referred to as "**Tenant**."

1. **Lease of Premises.** The **Landlord**, in consideration of the rent to be paid and the covenants to be performed by the **Tenant**, does hereby lease to the **Tenant** the following-described premises situated in the City of Bismarck, Burleigh County, North Dakota:

First floor and one storage space in the basement of the building known as the City/County Building, located at 221 North 5th Street, Bismarck, North Dakota, and consisting of approximately 14,967.75 square feet, including only the area shown on Exhibit "A," attached hereto and made a part of this lease.

2. **Term of Lease.** The term of this lease shall be for a period of one year, commencing on the first day of January 1, 2024, and terminating on the last day of December, 2024. This Lease Agreement shall automatically renew for additional one-year periods, on the same terms and conditions, upon the expiration of the original or renewed term.

During the initial or renewed term of this Lease Agreement, the **Tenant** shall have the unilateral right to terminate the lease by giving 180 days' notice of its intent to cancel the lease and vacate the premises. This lease will not allow month-to-month tenancy and shall terminate at the end of the term. The parties can execute a new lease or vacate the premises.

Failure to pay the Rental Payments below on the dates indicated, which if it continues for a period of ten (10) days after written demand by the **Landlord** for payment, shall be a considered a default and result in termination of the lease.

3. **Rental Payments.** The **Tenant** agrees to pay as rental for the premises \$13.00 per square foot for a total of \$194,580.75 (14,967.75 square feet x \$13.00 per square foot) on an annual basis during the term of this lease. Rental payments are payable monthly on the 1st of each month in advance of occupancy or in installments as the parties hereto may agree in writing.

4. **Improvements and Remodeling.** The **Tenant** agrees to assume the cost of improvements or remodeling necessary or desired in those

areas leased by the **Tenant**. All proposed improvements shall be subject to prior written approval by the **Landlord**.

5. **The Landlord's Obligations.** The **Landlord** agrees as follows:

a. To provide commercially reasonable utility service to the leased premises, excluding telephone and internet.

b. To comply with the requirements of applicable building and housing codes materially affecting health and safety and to comply with all applicable laws of this state and ordinances of the City of Bismarck in force from time to time relating to the leased premises and **Landlord's** obligations thereto.

c. To keep all common areas of the premises in a clean and safe condition.

d. To furnish janitorial services.

6. **The Tenant's Obligations.** The **Tenant** agrees as follows:

a. To use commercially reasonable amounts of utilities for its operations and **Tenant's** uses only.

b. To pay the rental when due.

c. To keep the leased premises in a clean, safe, and healthful condition, and to maintain the leased premises in such repair as the same is at the time of initial occupancy during the term of the lease, save and except only reasonable use and wear, and damage by fire and unavoidable casualty.

d. Not to make or suffer any unlawful, improper, or offensive use of the premises, and to keep and observe all of the laws of this state and the ordinances of the City of Bismarck in force from time to time relating to the leased premises or the use thereof.

e. To permit the **Landlord** at all reasonable times to enter upon and examine the premises and to make such repairs as may be thought necessary by the County for the protection of the premises.

f. To surrender the leased premises to the **Landlord** at the expiration of the Lease Agreement in as good condition and repair as the same were in when the premises were occupied,

reasonable wear and tear and damage by fire or other unavoidable casualty only excepted. Also, in default of the payment of any rents due or failure to perform any of the terms or conditions of this lease, then to surrender premises upon demand made by the **Landlord**. Upon expiration of the Lease Agreement, the **Tenant** grants to the **Landlord** the right of reentry to such premises, should the option to extend the lease not be exercised.

g. To pay for its share of janitorial services. The **Tenant's** share of the janitorial services shall be computed based upon the total square footage leased by the **Tenant** as a percentage of the total usable square footage in the building. The **Tenant** agrees to pay its share of the cost of janitorial services promptly when due.

h. **TENANT** shall permit no signs to be placed outside the Leased Premises unless approved in writing by the Renaissance Zone Authority Board acting as the Downtown Design Review Committee, except what is presently on the building.

7. **Termination of Lease in the Event of Destruction of Premises.** It is agreed that in the event the leased premises are destroyed or damaged by fire or the elements to the extent they should be un-tenantable, then this lease shall immediately terminate, unless the **Landlord**, within 20 days of the happening of such event, gives notice of intention to restore the building and restore possession of the leased premises to the **Tenant**, and shall fully restore such premises within a reasonable time thereafter, provided, that during the term between destruction and restoration the payment of such rent shall be suspended.

8. **Assignment.** This lease may not be assigned or sublet by the **Tenant** without the prior written consent of the **Landlord**. This lease shall not terminate by reason of any sale of the premises by the **Landlord** to third parties, but shall continue throughout the entire term.

Dated this _____ day of _____, 2023.

ATTEST:

CITY OF BISMARCK, NORTH DAKOTA

Keith Hunke
City Administrator

Micheal T. Schmitz, President
Board of City Commissioners

STATE OF NORTH DAKOTA)
) SS.
COUNTY OF BURLEIGH)

On this _____ day of _____, 2023, before me personally appeared Michael T. Schmitz, President of Board of City Commissioners, and Keith Hunke, City Administrator, known to me to be the persons who are described in, and who executed the within and foregoing instrument and who severally acknowledged to me that they executed the same.

Notary Public

Dated this _____ day of _____, 2023.

ATTEST:

BURLEIGH COUNTY, NORTH DAKOTA

Leo Vetter
County Auditor/Treasurer

Becky Matthews, Chair
Board of County Commissioners

STATE OF NORTH DAKOTA)
) SS.
COUNTY OF BURLEIGH)

On this _____ day of _____, 2023, before me personally appeared Becky Matthews, Chair of Board of County Commissioners, and Leo Vetter, County Auditor/Treasurer, known to me to be the persons who are described in, and who executed the within and foregoing instrument and who severally acknowledged to me that they executed the same.

Notary Public